

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BRIAN COFFEY)	CASE NO. 1:18cv02675
)	
<i>Plaintiff,</i>)	JUDGE CHRISTOPHER A. BOYKO
)	
vs.)	
)	<u>DEFENDANTS KENNETH L.</u>
BUCKEYE SHAKER SQUARE)	<u>JOHNSON AND GARNELL</u>
DEVELOPMENT CORPORATION, et)	<u>JAMISON'S MOTION FOR LEAVE TO</u>
al.)	<u>FILE ANSWER, INSTANTER</u>
)	
<i>Defendants.</i>)	

NOW COME Defendants Kenneth L. Johnson and Garnell Jamison, by and through their legal counsel, Forbes, Fields & Associates Co., L.P.A., and hereby move this Honorable Court, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, to allow said Defendants to file their Answer, Instanter, a copy of which is attached hereto as Exhibit "A". Rule 6(b) states in pertinent part:

(b) Extending Time

When an act may or must be done within a specified time, the court may, for good cause, extend the time...(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

Said Defendants state that leave should be granted in this situation. Defendants Kenneth L. Johnson and Garnell Jamison have just, for the very first time, retained legal counsel. Further, Defendants Johnson and Jamison never received service of Plaintiff's Complaint and did not become aware of this action until they received service of Plaintiff's Motion for Default Judgment. Forbes, Fields & Associates Co., L.P.A. was officially retained to represent said

Defendants as of June 28, 2019, and this Motion for Leave to File Answer, Instantly, is being promptly filed.

In determining whether neglect to timely answer a Complaint was excusable or inexcusable, the Supreme Court of the United States has laid out a four factor balancing test. These factors include: (1) Whether the delay in filing was within the reasonable control of the movant; (2) The length of the delay and the delay's potential impact on judicial proceedings; (3) The danger of prejudice to the non-moving party; and (4) Whether the movant acted in good faith. *Pioneer Investment Services Co. v. Brunswick Associates, Ltd. Partnership*, 507 U.S. 380, 395 (1992).

The delay in filing was not within the reasonable control of Defendants Johnson and Jamison, as neither of them was served with Plaintiff's Complaint. Defendants Johnson and Jamison did not become aware of this action until they were served with Plaintiff's Motion for Default Judgment, which was filed on June 19, 2019. The length of delay will not impact judicial proceedings as the potential class has not yet been approved by this Court and this Court has not yet heard any of the merits of this case and the legitimate defenses which will be asserted by Defendants Johnson and Jamison. Thus, Plaintiff will not be prejudiced if Defendants are allowed to file their Answer.

In contrast, Defendants Johnson and Jamison, who did not receive service of the Plaintiff's Complaint, will be extremely prejudiced if they are not allowed to file their Answer, Instantly. It would be unjust to allow this action to be decided on a procedural technicality, rather than on the merits. *See i.e. U.S. v. \$22,500.00 U.S. Currency*, 595 F.3d 318, 322 (6th Cir., 2010). Defendants Johnson and Jamison have acted in good faith because they were not aware of Plaintiff's Complaint, through no fault of their own. Additionally, as soon as Defendants Johnson

and Jamison learned of this action, they promptly retained legal counsel, and are promptly filing this Motion for Leave to file Answer, Instantly. All four factors of the balancing test laid out by the Supreme Court of the United States weigh in favor of granting Defendants Johnson and Jamison's Motion for Leave to File Answer, Instantly.

WHEREFORE, for all the foregoing reasons, Defendants Kenneth L. Johnson and Garnell Jamison, pray that their Motion for Leave to File Answer, Instantly, be granted.

Respectfully submitted,

FORBES, FIELDS & ASSOCIATES CO., L.P.A.

/s/ George L. Forbes

/s/ Scott H. Schooler

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CERTIFICATE OF SERVICE

A copy of the foregoing Defendants Kenneth L. Johnson and Garnell Jamison's Motion for Leave to File Answer, Instanter was served via the Court's electronic case filing system on this 3rd day of July, 2019, to the following:

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